

Panaji, 17th August, 2020 (Sravana 26, 1942)

SERIES II No. 20

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

EXTRAORDINARY

GOVERNMENT OF GOA

Department of Elections

Goa State Election Commission

Notification

No. 4/21/GMCNSE/SEC-2019/1059

As per the provisions of Section 10A of the Goa Municipalities Act, 1968 which deals with the election of the Municipal Councils; the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Council has been vested in the State Election Commission constituted under Section 237 of the Goa Panchayat Raj Act, 1994.

2. In accordance with the provisions existing under Article 243 U(1) of the Constitution of India, the duration/term of Municipalities has been fixed as five years from the date appointed for its first meeting and no longer; and as per Article 243 U(3), an election to constitute a Municipality shall be completed before the expiry of its duration as specified in Clause (1).

3. The responsibility for fixation of the dates, timings and places of various stages of election has been vested in the State Election Commission as per the provisions contained in the Rule 4 of the Goa Municipalities (Election) Rules, 1969 which is reproduced below:

(1) For the purpose of holding a general election, the State Election Commission shall by order in Form I, appoint:-

a) the last date, time and place for making nominations;

b) the date, time and place for scrutiny of nominations, which shall be a date not later than the third day after the last date for making nominations;

c) the last date for withdrawal of candidature, which shall be a date not later than the third day for scrutiny of nominations;

d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which dates shall be a date not earlier than the twelfth day after the last date for the withdrawal of candidatures, and the time during which the poll shall be taken on the date or dates so fixed:

Provided that, such date or dates shall not be earlier than two months before the date of expiry of terms of office of councillors of the council to which such election is to be made and shall not be later than fifteen days before the date of such expiry:

Provided further that in the case of the first general elections to be held under the Act, the date or dates to be fixed for the poll shall be such as the State Election Commission may deem fit, but such date or dates shall not be earlier than the twelfth day after the last date for the withdrawal of candidatures.

(e) the date or dates, time and place for the counting of votes, and

(f) the dates, time and places for other stages of the elections.

(2) The State Election Commission shall, not less than seven days before the last date fixed for the nomination of candidates, cause the order under

sub-rule (1) to be published as a public notice in the same manner as is provided in Clauses (a) and (c) of sub-section (2) of Section 311 of the Act, and where there are local newspapers, also additionally by publication in one or more of such newspapers. The State Election Commission shall also arrange to give wide publicity to the election programme by affixing copies of the order in local languages at the municipal office and at such other conspicuous places within the municipal area as may be deemed fit and by causing the said order to be published in such other manner as deems fit.

4. The term of office of the 11 Municipal Councils, namely, Bicholim, Cuncolim, Curchorem-Cacora, Canacona, Mapusa, Margaon, Mormugao, Pernem, Quepem, Sanguem and Valpoi expires on 04th November, 2020 as the first meeting of the Councillors was held on the 05th November, 2015; and therefore, the elections have to be conducted atleast 15 days before the date of such expiry of their term as per Rule 4(1)(d) quoted above.

5. The election programme is required to be published by the State Election Commission at least seven days before the last date fixed for nomination as per Rule 4(2).

6. The list of voters for different wards of the Municipal areas are mandated to be prepared, authenticated and also kept open for public inspection at the municipal office atleast one month before the last date fixed for nomination of candidates as per the provisions of Section 11 of the said Act which reads as hereunder.—

- (1) The electoral roll of the Goa, Daman and Diu Legislative Assembly prepared under the provisions of the Representation of the People Act, 1950, and for the time being in force on such date as the State Election Commission may by general or special order notify in this behalf (being a date not earlier than one month from such notification) for such constituency of the Assembly or any part thereof as is included in the municipal area, shall be divided into different sections corresponding to the different wards in the municipal area; and a printed copy of each section of the roll so divided and authenticated by such officer shall be the list of voters for each ward. The ward lists shall collectively be deemed to be the municipal voter's list.
- (2) Such officer shall maintain the lists of voters prepared under sub-section (1) and the lists so maintained shall be deemed to be the authentic lists for all elections under this Act.

- (3) Atleast one month before the last date fixed for nomination of candidates for every general election, such officer shall keep open for public inspection at the municipal office and at such other places in the municipal area as the State Election Commission may fix, copies of the list of voters of each ward maintained under sub-section (2).

7. Accordingly, the Returning Officers who are appointed by the State Election Commission for conduct of elections will be required to complete the task of making municipal voter's lists available for public inspection latest by 03rd September, 2020 keeping in view the time gap to be observed between different stages involved in the election process in accordance with the provisions contained in the Rule 4 as stated hereinabove.

8. The Returning Officers may also need atleast two weeks time for preparation of the ward wise lists of voters; therefore, they ought to be appointed by the Commission without any further loss of time.

9. The Commission had fixed 18th October, 2020 as the date to conduct the General Election to the 11 Municipal Councils in the month of December, 2019 itself and had asked the Government vide letter No. 4/21/GMCNSE-2019/SEC/1214 dated 10-12-2019 to notify the delimitation of wards in each municipal council so as to enable the State Election Commission to prepare the list of voters and keep it open for public inspection. Further, the Government was also requested to notify the reservation of seats for women, scheduled castes, scheduled tribes or other backward class as required under Section 10 of the said Act.

10. The Department of Urban Development (Municipal Administration) vide their letter No. 10/821-2019-DMA/Election to 11 MC/3233 dated 07-01-2020 while conveying the approval of the Government to conduct the election for 11 municipal councils on 18th October, 2020 (which approval under the Rules is not required) intimated that the delimitation of wards in these municipal councils shall be intimated immediately. And the Department of Urban Development vide their letter 10/821-2019-DMA/Election to 11 MC/1133 dated 05-08-2020 forwarded the Gazette notification dated 07th July, 2020 pertaining to the delimitation of wards to the Commission. The reservation of wards in these municipal councils is yet to be notified by the Government.

11. In view of the Constitutional provisions that mandate holding of elections timely, i.e.; before the expiry of their tenure and also in the light of the statutory provisions as contained in the Goa Municipalities Act, 1968 and Goa Municipality (Election) Rules, 1969, it is necessary that the Commission notifies the election programme/schedule without any further loss of time so that the voters lists are kept open for public inspection latest by 03rd September, 2020. However, the Commission has been noticing through the Government sources as also the media reports that during the period from 15th July, 2020 to 14th August (31 days), a total of 7986 Covid positive cases have been reported and 74 persons have died. Thus the average number of Covid positive cases being reported daily during this period is 258. Although it is also a fact that the number of persons recovering from Covid has also been going up progressively.

12. The Commission has given a thoughtful consideration to the developing Covid situation in the State of Goa as a whole because the 11 municipal councils are located at different geographical positions in the State and the cases are being reported from almost all over the State presently. It has also considered the fact that the electioneering would not only involve participation of a large number of people but also movement of the manpower and the machinery required for conducting the election from one place to other. The Commission has also taken into consideration the guidelines issued by the Government of India for maintenance of health related protocols as also the instructions issued by the Government of Goa for the people, to be observed while being at public places. The election process also involves holding of public meetings/rallies/processions in which enforcing the health protocols and regulating the number of participants in the gatherings, restricted as per the Government instructions will be a serious issue.

13. The Commission sincerely realises its due importance and solidly stands by the need for the fullest compliance of all health related protocols by all concerned and cannot afford to create a situation which becomes another reason for the spread of this pandemic further resulting in the rise of number of Covid cases in the State.

14. The Commission is also conscious of the fact that the officers responsible for conduct of the elections like ROs and AROs are going to be from amongst the officers who are presently working as

the Deputy Collectors and Mamlatdars respectively. And also the fact that these officers are currently engaged in the management of Covid situation in the field from administrative point of view almost on a full time basis, therefore, it would not be appropriate to burden them with additional responsibility of conducting elections in this critical phase.

15. The Commission, has therefore, weighed the competing demands of holding a timely, free and fair municipal election to comply with the legal provisions with the demands of health and medical security of the public/voters in view of the rising trend noticed in the Covid positive cases presently. The people, Commission considers, occupy not only the centre and the periphery but the entire political landscape of the country because the democracy is not only of the people, but also by the people and for the people. The Commission simply in order to hold the elections to the municipal councils timely, cannot afford to compromise with the health and safety of the people /voters/candidates/election staff and the security staff; which it considers as the matter of paramount concern; in the wake of the developing situation of Covid.

16. The Commission has also noted that the local body elections that were to be held in the month of March, 2020 in the States of Andhra Pradesh, Telangana, West Bengal and Bihar have been postponed in view of the Covid pandemic by their respective State Election Commissions. Besides above, the general elections to the Zilla Panchayats in Goa fixed for 22nd March, 2020 had also to be postponed for the same reason.

17. The Hon'ble High Court of Bombay at Goa while disposing of the case seeking the postponement of the general elections to the Zilla Panchayats fixed for 22nd March, 2020 in the matter of Kenneth Ian Stewart Silveira & Anr. v/s State of Goa & Anr. in the PIL WP No. 17 of 2020 had inter alia; made following observations:

"Para 29. The holding of timely elections in a free and fair manner is no doubt the basic feature not only of a democracy, but our Constitution as well. However, a free and fair election, postulates existence of circumstances in which the voters are in a position to exercise their franchise in a free and fair manner unhindered by a looming pandemic, not to mention the several directives and advisories to refrain from moving outdoors, unless it is really necessary"

18. The Corona pandemic has already been declared as a disaster by the Government of India and as a consequence thereof, a series of measures have been taken and still being undertaken to contain the spread of the COVID almost everywhere including the State of Goa but the fact remains that the cases are still being reported from different parts of the State.

19. The Hon'ble Supreme Court of India in its landmark judgement in Kishan Singh Tomar V/s The Municipal Corporation of the City of Ahmedabad dated 19-10-2006 in Appeal (Civil) No. 5756 of 2005 has held that the elections can be postponed for genuine supervening difficulties and exceptional circumstances, such as natural calamities like floods, earthquake or manmade calamities like rioting or breakdown of law and order till the normalcy is restored.

20. The Commission under the prevailing circumstances is of the firm opinion that the current situation certainly presents exceptional

circumstances before it and appreciates very well that there are going to be genuine difficulties in holding free and fair general elections to the 11 Municipal Councils which is scheduled on 18th October, 2020. The Commission also considers that the life of the people cannot be put to risk by notifying the election programme in accordance with the provisions of the Rule 4 of the Goa Municipal (Election) Rules, 1969 and thereby allowing the election process to begin at this juncture.

21. Now therefore, after giving a careful consideration to all the circumstances as aforesaid and in exercise of powers conferred under Article 243K and 243ZA of the Constitution of India, the State Election Commission, hereby order that the general elections to the 11 Municipal Councils fixed for 18th October, 2020 are postponed for a period of three months.

R. K. Srivastava, State Election Commissioner.

Altinho, Panaji, 17th August, 2020.

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Printed and Published by the Director, Printing & Stationery,
Government Printing Press,
Mahatma Gandhi Road, Panaji-Goa 403 001.

PRICE – Rs. 4.00

PRINTED AT THE GOVERNMENT PRINTING PRESS, PANAJI-GOA—162/160—8/2020.